

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FAUSTO VAZQUEZ)	
Claimant)	
VS.)	
)	Docket No. 204,185
J. SKINNER WHOLESALE NURSERY INC.)	
Respondent)	
AND)	
)	
FARMERS ALLIANCE MUTUAL INS. COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested review of the Order dated April 8, 1997, entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on October 29, 1997.

APPEARANCES

Frank D. Taff of Topeka, Kansas, appeared for the claimant. Matthew S. Crowley of Topeka, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board considered the administrative file of the Division of Workers Compensation.

ISSUES

By Order dated April 8, 1997, the Administrative Law Judge quashed the subpoena which claimant served on his own medical expert witness, Peter V. Bieri, M.D., the day before the doctor's deposition was scheduled to occur. Claimant requested the Appeals Board to review that Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

Although the Administrative Law Judge quashed the subpoena which claimant served upon Dr. Bieri, the doctor's deposition was later taken on May 15, 1997, and considered by the Administrative Law Judge for purposes of the final Award which was entered in this proceeding on July 8, 1997. Because Dr. Bieri's testimony was included in the evidentiary record before the Administrative Law Judge, claimant's objection to the Order quashing the subpoena is moot and this appeal should be dismissed.

AWARD

WHEREFORE, IT IS THE FINDING, DECISION, AND ORDER OF THE APPEALS BOARD that claimant's application for review of the Order dated April 8, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frank D. Taff, Topeka, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director